

FILED

AUG 19 2009

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIACLERK U.S. DISTRICT COURT, WEST. DIST. OF PENNSYLVANIA
PETITION FOR WRIT OF HABEAS CORPUS
28 U.S.C. §2254 - PERSONS IN STATE CUSTODY)

09.1106

Gerald E. Brewer, sr., PETITIONER
(Full name) (Include name under which you were convicted)

vs.

CASE NO. _____
(Supplied by the Court)Not in Custody (Commonwealth of PA Parole) RESPONDENT
(Name of Warden, Superintendent, Jailor, or authorized person having custody of petitioner)

and

THE DISTRICT ATTORNEY OF THE COUNTY OF Allegheny

and

THE ATTORNEY GENERAL OF THE STATE OF Pennsylvania
ADDITIONAL RESPONDENTBoard of Probation and Parole
Name Prison NumberNot in Confinement Parole # 643 DR
Place of Confinement Pennsylvania

(If petitioner is attacking a state court judgment which imposed a sentence to be served in the future, petitioner must fill in the name of the state where the judgment was entered. If petitioner has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion under 28 U.S.C. §2255, in the federal court which entered the judgment. DO NOT USE THIS FORM FOR §2255 PURPOSES.)

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODYINSTRUCTIONS - READ CAREFULLY

Clerk
U.S. District Court
P. O. Box 1805
Pittsburgh, PA 15230

PETITION

1. Name and location of court which entered the judgment under attack: Court of Common Pleas of Allegheny County
Superior Court of PA-western, Allegheny County, PA
2. Criminal Docket Number: CP-02-CR-0003571-2002
3. Date of imposition of sentence: August 25, 2003
4. Length of sentence: Aggregate term of 2-7 years
5. Nature of offense or offenses for which you were convicted:
(1) Theft By unlawful Taking/Disposition - F-3
(2) Retaliation Against Witness - misdemeanor
6. What was your plea? (Check one) Not Guilty ☒ Guilty ()
Nolo Contendere ()
If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: N/A
7. If you were found guilty after a plea of not guilty, check whether finding was made by: Jury ☒ Judge only ()
8. Did you testify at the trial? Yes ☒ No ()
9. Did you appeal from the judgment of conviction? Yes ☒ No ()
10. If you did appeal, answer the following:
 - (a) First Appeal
PA
 - (1) Name of Court: Supreme Court
 - (2) Docket Number: _____
 - (3) Result: denied allowance of appeal, on direct appeal 120505
 - (4) Citation (If known): uKn.
 - (b) Second Appeal
 - (1) Name of Court: Court of Common Pleas of Allegheny County

- (2) Docket Number: CC 2002 03571
- (3) Result: denied-amended PCRA Filed 03-15-06 ^{denied 09-21-07}
- (4) Citation (If known): UKn
- (c) If you filed a petition for certiorari in the United States Supreme Court, give details: N/A

11. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal, including petitions under the Post Conviction Hearing Act? Yes ☒ No ()
- Allocatur denied November 25, 2008*

12. If your answer is "Yes" to 11, give the following information:

- (1) Name of court: Superior Court October 2, 2007
- (2) Nature of proceeding: Notice of Appeal
- (3) Grounds raised: Error refusing to grant PCRA relief. Right to due process of law. Error, refusing PCRA relief in vacating conviction on Retaliation Charge.
- (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes () No ☒
- (5) Result: _____ Date: _____

- (b) As to any second petition, application or motion give the same information:

- (1) Name of Court: Supreme Court of PA ⁰⁵⁻⁰⁶⁻⁰⁸
- (2) Nature of Proceeding: Petition for Allowance of Appeal
- (3) Grounds raised: Affirmed Superior Court Denied 12-16-08

- (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes () No ☒
- (5) Result: _____ Date: _____

(c) As to any third petition, application or motion give the same information:

- (1) Name of Court: _____
 (2) Nature of Proceeding: _____
 (3) Grounds raised: _____

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes () No ()

(5) Result: _____ Date: _____

(d) Did you appeal to the highest state court having jurisdiction the result of any action on any petition, application or motion:

- (1) First petition, etc.: Yes (✓) No ()
 (2) Second petition, etc.: Yes (✓) No ()
 (3) Third petition, etc.: Yes () No ()

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not? N/A

13. State concisely every ground on which you claim that you are being held unlawfully. State specifically the facts support-ing each ground. You should raise in this petition all available grounds (relating to this conviction) on which you are being held in custody unlawfully, and you should state all the facts sufficient to support each ground. DO SO NOW; because of recent changes in the law you may not be given an opportunity to amend your petition later (See instructions, number 7.).

Grounds: ① 14th Amendment issue: state of PA Conviction:

"Theft by unlawful taking or Disposition" 18 Pa C.S.A.
3921-Felony 3. Sentence: 1-5 Years. (OVER)

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Trial Court erred as a matter of law in failing to grant Petitioners request for a new trial when the petitioner established that he had discovered after his conviction that the District Attorney's office had failed to turn over exculpatory evidence at his trial, a violation of his due process under BRADY v. MARYLAND, 373 U.S. 83. In the alternative, the trial court erred when it failed to award the petitioner a new trial based upon his claim of after-discovered evidence (document withheld by the District Attorney's office at trial), chief investigator (for the prosecution) disclose document in civil deposition showing errors that left her financial calculations of alleged missing funds demonstrating no evidence of theft. Commonwealth claimed no Brady violation, citing the document produced as an "internal working document," or typographical errors that showed an actual surplus of money, in lieu of missing/shortage. Exculpatory evidence was discovered at civil deposition when P.A. investigator produced a document that was not provided before and during trial, and thus could not have been obtained prior or through other reasonable diligence. The document, demonstrative evidence of what was or was not missing from the police department safe, and thus used, for a jury to evaluate whether a theft had occurred at all.

This document was critical to Petitioners case, and of a nature and character that it would likely compel a different verdict in this trial, due to the circumstantial and documentary nature of the prosecution. This document would have allowed the petitioner the opportunity to place before the jury a complete and detailed accounting and methodology of the Prosecutions financial investigatory work on this case. The detailed calculations of the money could be clearly demonstrated as to what went in and came out of the chief's (petitioner) safe during the petitioners tenure outside of a flawed property voucher system.

1st Amendment issue: state of Pa conviction: "Retaliation Against witness." 18 Pa C.S.A. 4953-misdemeanor. Sentence 1-2 years.

A- The First Amendment gives this petitioner a right to petition the government for redress of grievances, and to express my opinion regarding matters of public concern.
B- Petitioners letter to mayor after a voluntary resignation as chief of police was privileged under the first Amendment, because it is a means of seeking redress of grievances and requesting correction of matters important to public policy (corruption the police department).

C- The Commonwealth District Attorney's office used petitioners 1st Amendment letter to the mayor as a reason to incarcerate and convict me of a crime. This, in violation of Petitioner's rights protected under the First Amendment of the federal constitution.

End of item 13.

14. If any of the grounds listed were not previously presented in any other court, state or federal, state briefly what grounds were not so presented, and give your reasons for not present-ing them:

N/A

15. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes () No ☒

16. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing: Stanley Greenfield - Pittsburgh

(b) At arraignment and plea: " " "

(c) At trial: Pro se

(d) At sentencing: Pro se

(e) On appeal: Stanley Greenfield - Pittsburgh

(f) In any post-conviction proceeding: Victoria Vidt,
Allegheny Public Defender's Office

(g) On appeal from any adverse ruling in a post-conviction proceeding: Victoria Vidt - Allegheny County
Public Defender's Office

17. Were you sentenced on more than one count of any indictment, or more than one indictment, in the same court and at the same time:

Yes ☒ No ()

18. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes () No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: N/A

(b) And give date and length of sentence to be served in the future: N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future? Yes () No ☒

Wherefore, petition prays that the court grant petitioner relief to which he may be entitled in this proceeding.

Executed at: Pittsburgh, Allegheny, PA
(City, County, State)

I, Gerald E. Brewer Sr declare under penalty of perjury that the foregoing is true and correct.

Executed on: 11 August 2009
(Date)


(Signature of Petitioner)

(NOTE: No Notary Certification Required)

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